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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,475	01/28/2004	Robert Jean Legro	24544Y	9431

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NATH & ASSOCIATES
1030 15th STREET, NW
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WASHINGTON, DC 20005

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,475

Applicant(s)

LEGRO ET AL

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/806,949.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of claims 1-8 in the reply filed on 26 November is acknowledged. The traversal is on the ground(s) that an appropriate explanation as to the existence of a serious burden if a restriction were not required. This is not found persuasive because applicant is entitled to only one patented invention per application and the independent claims cited in this application contained multiple special technical features as identified in the restriction requirement mailed 29 October 2004. Each special technical feature creates a burden to the examiner in the sense that the examiner has to examine multiple inventions. Each grouping of the method claims constitutes a different special technical feature that creates a different embodiment of the pesticide pellet (e.g. a killed seed pellet with an outside coating of pesticide) and thus constitutes a burden on the examiner to search out each embodiment. Claims 1 and 6 have the special technical feature of a method to protect a germinating seed which utilize a pesticide containing pellet, but claims 9-11 are the method steps of making a pesticide containing pellet. The pellet of claims 1 and 6 do not have to be made by the same method steps presented in claims 9-11. For example, the pesticide pellet of claims 1 and 6 have pesticide around an inert core versus around the outside of the pellet and it does not require a killed seed and it does not require the step of drying as required in the other method claims.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Patent CA 1143651 to Lemon in view of U.S. Patent No. 2,656,649 to Ostier.

Regarding Claims 1, 6, 7 and 8, Lemon teaches a method for the protection of germinating seed with a pesticide, characterized in that seed and pesticide-containing pellets (Lemon page 1 line 8-13; page 2 line 15; page 2 line 18; Lemon teaches the pesticide is a granule i.e. pellet) are sown as individually at the same time; the pesticide-containing pellet comprises an inert core *or* a killed seed as a core and wherein said pesticide is located around said core (Lemon page 4 line 16-25 and page 5).

Lemon teaches a seed, but is silent on the seed being a seed containing pellet. However, Ostier teaches that it is old and notoriously well-known to pelletize seeds (Ostier title). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lemon with the seed pellet teachings of Ostier for the advantage of preventing the seed from breaking during transport and sowing and to provide proof against any variation of temperature or atmospheric moisture as taught by Ostier (Ostier Col. 1 line 16-21).

Regarding Claim 2, Lemon as modified teaches the pesticide-containing pellets are substantially the same shape and size as the seed-containing pellets (Lemon page 3 line 11-15).

Regarding Claim 3, Lemon as modified teaches that the pesticide-containing pellets comprise a dose of pesticide that is **sufficient** for one seed germ (Lemon page 1 line 13-19; Lemon page 2 line 18-23; and Ostier Col. 1 line 4).

Regarding Claim 4, Lemon as modified teaches that the pesticide-containing pellets sufficient contain a filler material (Lemon page 11 line 18).

Regarding Claim 5, Lemon as modified teaches the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter from 0.5-5 mm (Lemon 1 line 11-10 and page 3 line 25).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


U.S. Patent No. 4,198,782; U.S. Patent No. 3,950,891; U.S. Patent No. 5,389,115; U.S. Patent No. 3,600,830; U.S. Patent No. 3,651,772; U.S. Patent No. 5,130,171; U.S. Patent No. 4,971,796; U.S. Patent No. 4,759,151; U.S. Patent No. 4,808,430; U.S. Patent No. 5,068,105; U.S. Patent No. 5,623,781.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

01 February 2005